

**MISSISSIPPI COURT OF APPEALS
NO. 2015-CA-00107-COA**

NATHAN SINKO

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

**APPENDIX
APPELLANT'S BRIEF**

MISSISSIPPI CORRECTIONS AND CRIMINAL JUSTICE TASK FORCE

FINAL REPORT

DECEMBER 2013

Final Report

December 2013



Mississippi
Corrections and Criminal Justice Task Force

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Summary

Mississippi's prison population has grown by 17 percent in the last decade.¹ In July of this year, Mississippi prisons housed 22,600 inmates. Mississippi now has the second-highest imprisonment rate in the country, trailing only Louisiana.² Absent policy change, these trends will continue and Mississippi will need to house an additional 1,990 inmates by 2024.³ This growth is estimated to cost the state an additional \$266 million in corrections spending over the next 10 years.

In an attempt to ease escalating prison costs over the past decade, between 2008-2010, the state adopted a series of patchwork release policies that undermined clarity in sentencing, created a disconnect between the corrections and criminal justice systems, and were ultimately unsuccessful at controlling prison population and cost growth.

Seeking a comprehensive and data-driven review of the sentencing and corrections systems, the 2013 Mississippi Legislature passed, and Governor Phil Bryant signed into law, House Bill 1231 to establish the bipartisan, inter-branch Corrections and Criminal Justice Task Force (Task Force).⁴ The Task Force was charged with developing policies that improve public safety, ensure clarity in sentencing, and control corrections costs. Beginning in June 2013, the Task Force analyzed the state's corrections and criminal justice systems, including an exhaustive review of sentencing, corrections, and community supervision data. Key findings include:

- Almost three-quarters of offenders entering prison in 2012 were sentenced for a nonviolent offense.
- More offenders are now entering prison for violations of supervision than for new crimes.
- Uncertainty about how long inmates will serve behind bars has helped push up sentence lengths by 28 percent over the past decade.
- Nearly one in three nonviolent offenders return to prison within three years of release.

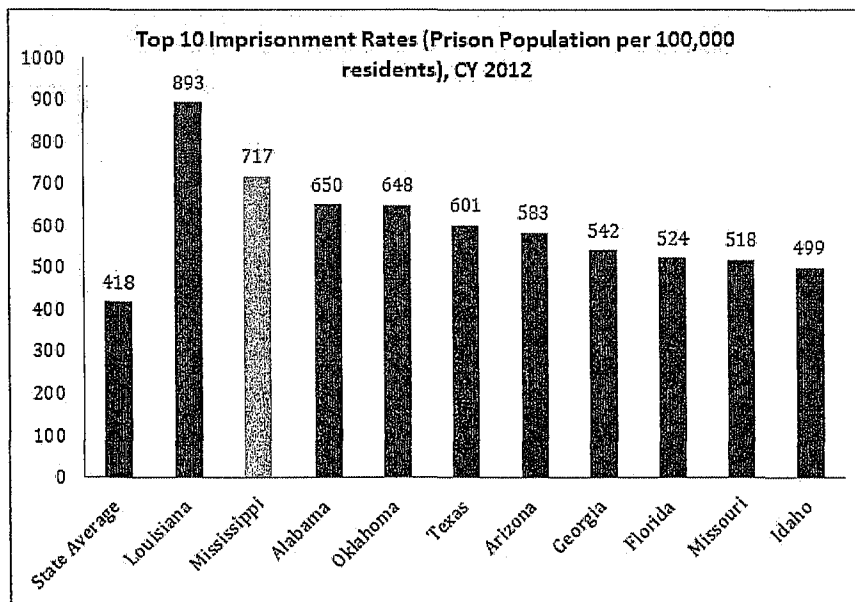
Based on the analysis, the Task Force developed a comprehensive package of policy recommendations that fulfill its mission. Taken together, the Task Force's policy recommendations are projected to halt all projected prison growth and avert at least \$266 million in corrections spending through 2024.

Members of the Corrections and Criminal Justice Task Force

Commissioner Christopher B. Epps (Chair)	Department of Corrections
Senator Willie Simmons	State Senate, District 13
Senator Sampson Jackson	State Senate, District 32
Senator Hob Bryan	State Senate, District 7
Representative Andy Gipson	House of Representatives, District 77
Representative Tommy Taylor	House of Representatives, District 28
Judge Larry Roberts	Court of Appeals
Judge Vernon R. Cotten	Eighth Circuit Court
Judge Jimmy Morton	Hinds County Justice Court
Judge Steve Ratcliff III	Madison County Court
Richard "Ricky" Smith, Jr., District Attorney	Ninth Circuit Court
Ronnie Harper, District Attorney	Sixth Circuit Court
Jamie McBride, Assistant District Attorney	Seventh Circuit Court
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Vicki Gilliam, Attorney	Mississippi Association for Justice
Ken Winter, Executive Director	Mississippi Association of Chiefs of Police

Challenges Facing Mississippi

Mississippi's prison population has grown by 17 percent in the last decade, nearly four times faster than the resident population.⁵ In July of this year, Mississippi prisons housed 22,600 inmates. Mississippi now has the second-highest imprisonment rate in the country, trailing only Louisiana.



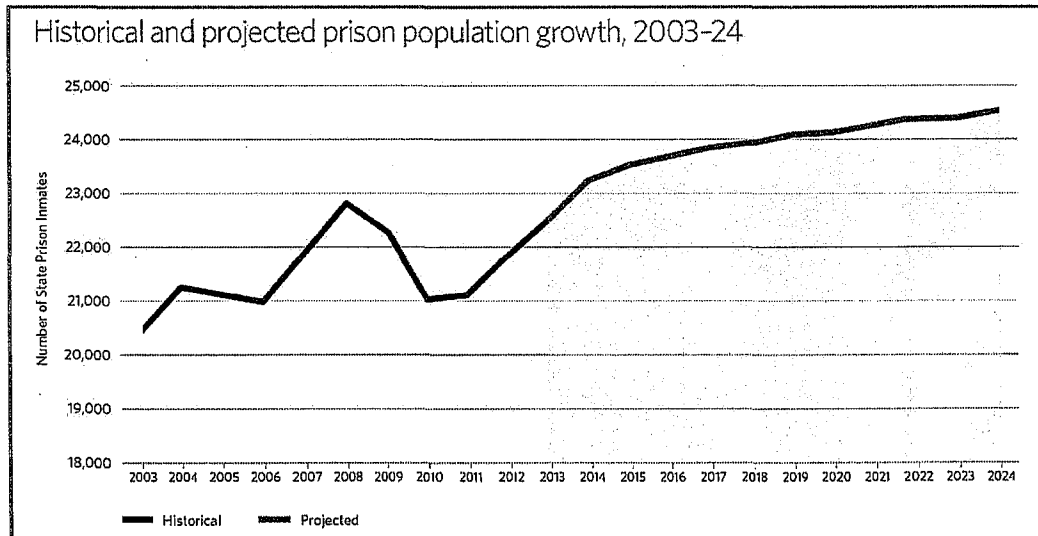
Growth in the state's prison population has come at significant taxpayer expense. Mississippi spent \$339 million on corrections in fiscal year 2013, up from \$276 million in 2003. This growth is primarily driven by prison costs.

As the prison population and costs escalated, the state legislature passed a series of earned time and release options to contain corrections costs. These policies helped reduce growth in the short term but the growth soon resumed. The policies have also made it increasingly difficult for judges, prosecutors, offenders, and victims to predict the percentage of a given sentence that will be served behind bars.

The Task Force also reviewed data that found that the state's growing prison population and increased corrections spending have failed to produce commensurate results for public safety. Under current state policies and resource allocation, nearly one in every three nonviolent offenders released from Mississippi prisons returns within three years.⁶

While the state's prison budget consumes hundreds of millions of dollars, cost-effective public safety strategies that hold offenders accountable and reduce crime are in short supply. The vast majority of corrections spending – 93 percent – pays for prisons, while the small remainder, approximately \$23 million, funds the supervision of the nearly 40,000 felony offenders on probation, parole, and house arrest.

If policies do not change, Mississippi's prison population is projected to grow by 1,990 inmates over the next decade. These added inmates will cost taxpayers an additional \$266 million in the next 10 years, including the costs of opening a previously closed facility.



Corrections and Criminal Justice Task Force

Seeking to improve the state's corrections and criminal justice systems, the 2013 Mississippi Legislature passed House Bill 1231 to establish the bipartisan, inter-branch Corrections and Criminal Justice Task Force (Task Force). Governor Phil Bryant signed the measure into law on April 4. The Task Force is comprised of 21 stakeholders including Democratic and Republican

legislators as well as judges, prosecutors, law enforcement officials, defense attorneys, a county supervisor, and a representative from the office of the state attorney general.

The Task Force was charged with submitting “a final report that contains a detailed statement of findings, conclusions, and recommendations of the task force to the Legislature, the Governor and to local and tribal governments by December 31, 2013.” Chaired by Corrections Commissioner Christopher Epps, the Task Force identified its goals as developing policies that:

- Clarify sentencing laws and policies, strengthen community supervision to hold offenders accountable, and improve the relationship between the corrections and criminal justice systems.
- Control corrections costs by focusing prison space on violent, career criminals and addressing the inefficiencies in the corrections and criminal justice systems.
- Protect public safety by investing in programs, policies, and practices that reduce recidivism.

Beginning in the summer of 2013 and extending through the end of the calendar year, the full Task Force met seven times to analyze Mississippi’s sentencing and corrections data, evaluate programs and policies across the state’s criminal justice system, and consider proven approaches to sentencing and corrections from other states. Using this information, Task Force members broke into three policy development subgroups, each focused on different parts of the sentencing and corrections system. Representative Andy Gipson chaired the subgroup on sentencing policies, Senator Willie Simmons chaired the subgroup on prison release policies, and Senator Hob Bryan chaired the subgroup on supervision policies. The goal of the subgroups was to craft policy options, including proposals to reinvest savings from averted prison spending into practices and programs proven to protect public safety by reducing recidivism.

Task Force members received input from a wide range of stakeholders. In November, Governor Phil Bryant held a Public Safety Summit, convening a diverse group of legislators and public safety professionals to solicit ideas for upholding the state’s commitment to public safety while containing prison growth. The Task Force held a roundtable of victims, survivors, and victim advocates to identify key priorities from the victim perspective. Additionally, the Task Force subgroups received input from judges, law enforcement, and other criminal justice stakeholders throughout their policy development work.

The Task Force received technical assistance from the public safety performance project of the Pew Charitable Trusts and its partner, the Crime and Justice Institute at Community Resources for Justice. This technical assistance was provided in conjunction with the Justice Reinvestment Initiative of the U.S. Department of Justice (JRI). JRI has provided similar assistance to two dozen states by helping to analyze sentencing and corrections data in order to develop research-based, fiscally sound policy options that protect public safety, hold offenders accountable, and contain corrections costs.

National Picture

Mississippi’s challenges are not unique. Across the country, state prison populations and corrections budgets have expanded rapidly in recent decades. In 2008, the total national incarceration rate rose to the point that one in every 100 American adults were behind bars.⁷ From

the mid 1980's to the mid 2000's, spending on corrections was the second fastest growing state budget item behind Medicaid.⁸

However, in recent years many states have taken steps to reduce their prison populations while holding public safety paramount. After 38 years of uninterrupted growth, the national prison population declined in 2009 and has dropped slightly now for three years in a row.⁹ Twenty-nine states reduced their imprisonment rates over the past five years, and the crime rate went down in all but three of them.¹⁰ During this same period, Mississippi's imprisonment rate increased by five percent, the ninth largest increase in the nation, while its crime rate declined at almost half the speed of the national rate.¹¹

Many states have taken substantial steps to rein in the size and cost of their corrections systems through a "justice reinvestment" strategy. A number of states across the South, including Arkansas, Georgia, Kentucky, North Carolina, South Carolina, and Texas, as well as a host of others outside the South, have implemented reforms to improve public safety and control corrections costs. These states revised their sentencing and corrections policies to focus state prison beds on violent and career offenders and then reinvested funds from averted prison expansion into cost-effective strategies proven to reduce recidivism.

In 2007, for instance, Texas was projected to need up to an additional 17,000 prison beds in five years. Rather than continue to fund unchecked expansion, Texas policymakers passed strategic reforms and invested \$241 million into treatment and diversion programs.¹² The results have been dramatic: state taxpayers have now avoided \$1.5 billion in construction costs and \$340 million in annual averted operations costs.¹³ Additionally, the parole failure rate has declined 39 percent since 2007.¹⁴ Meanwhile, the statewide crime rate has fallen to levels not seen since the 1960s.¹⁵

In 2011, policymakers in Georgia faced a projected eight percent prison population growth over the next five years at a cost of \$264 million. Rather than invest more taxpayer dollars in prisons, Georgia legislators looked to more cost-effective approaches. They unanimously passed a package of reforms that controlled prison growth through changes to drug and property offense sentences, and invested in improving public safety by strengthening community supervision and investing in local sanctions, treatment, and accountability courts.

Key Findings Reviewed by the Task Force ¹

Research on Imprisonment and Mississippi's Prison Data

Two primary factors determine the size of a state's prison population: the number of offenders entering prison and the length of time those offenders remain behind bars. Mississippi has grown in both of these categories: annual admissions to prison grew 35 percent in the last decade and length of stay for newly sentenced offenders increased 17 percent. Task Force members reviewed the latest research on prison admissions and length of stay before taking an in-depth look at Mississippi's own data to understand more about what was fueling the state's growth.

Task Force members also reviewed data that found the use of prison as a punishment for criminal offenders serves multiple purposes: retribution, offender rehabilitation, and public safety. Prisons

¹ Data compiled by Pew and reviewed by the Task Force.

can enhance public safety both by keeping offenders off of the streets (incapacitating them from committing further crime), and by deterring future criminal behavior.

The Task Force also reviewed research that shows prison can have the opposite effect for certain offenders, bringing them into closer contact with each other while removing them from positive community and family influences. A growing consensus among researchers around the "schools of crime" theory suggests that for many low risk, nonviolent offenders the negative impacts outweigh the positive; that is, sending offenders to prison can cause them to commit more crime when they get out rather than less.¹⁶

The Task Force considered the relationship between the length of prison terms and recidivism. Many observers assert that longer prison terms are more effective deterrents because they set a higher price for criminal behavior and hold offenders until they are beyond their high-crime years.¹⁷ Others claim that longer time behind bars actually increases the chances that inmates will return to a life of crime by breaking their supportive bonds in the community and hardening their association with other criminals. The best research finds that the two forces may cancel each other out. Several studies, on different populations and using varied methodologies, have failed to find consistent effects of longer prison terms on recidivism rates.¹⁸

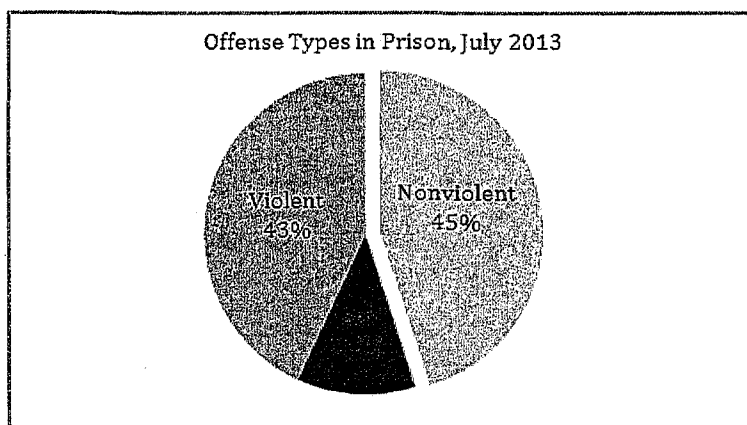
This research regarding prison admissions and length of stay provoked significant discussion among Task Force members about which offenders should be sent to prison and how long they should stay. Backed with this research, many states have recently implemented strategies that focus prison beds on serious and violent offenders, sending fewer low risk, nonviolent offenders to prison or reducing the length of prison stays for lower level drug and property offenders.

Mississippi, however, continues to increase the number of offenders sent to prison and the length of time spent behind bars. Significant numbers of these inmates were convicted of nonviolent offenses, including some who may be more effectively and affordably sanctioned with community supervision or with shorter periods of incarceration followed by supervision.

Many Prison Beds Focused on Nonviolent Offenders

An independent analysis of Mississippi Department of Corrections' (MDOC) data revealed that nearly three-quarters of individuals admitted to prison in FY2012 were sentenced for nonviolent crimes. Between FY2002 and FY2012, the number of nonviolent offenders admitted to prison rose 33 percent. This growing population of nonviolent offenders is also staying longer: newly sentenced nonviolent prisoners released in FY2012 stayed in prison an average of 10.5 percent longer than those released 10 years before. For some nonviolent offense types, this growth in length of stay was even more pronounced: length of prison stay for drug possession offenders, for example, rose 31 percent from FY2002 to FY2012.

Increases in admissions to prison and length of stay in prison for nonviolent offenders have resulted in a current prison population that is nearly half nonviolent offenders.



Many Prison Beds Focused on Offenders Admitted for Technical Revocations

The Task Force reviewed data showing that many offenders enter prison not because of a new criminal sentence but because of a revocation from community supervision.¹⁹ Prison admissions for revocations increased 84 percent from FY2002 to FY2012. In fact, FY2012 was the first time more offenders entered prison from a revocation from supervision (5,481) than from a new criminal sentence (4,973).

In FY2012, the average length of prison stay for revocations was 20 months. High admissions compounded with long lengths of prison stay have resulted in a standing prison population that is over one third (38 percent) revocations.

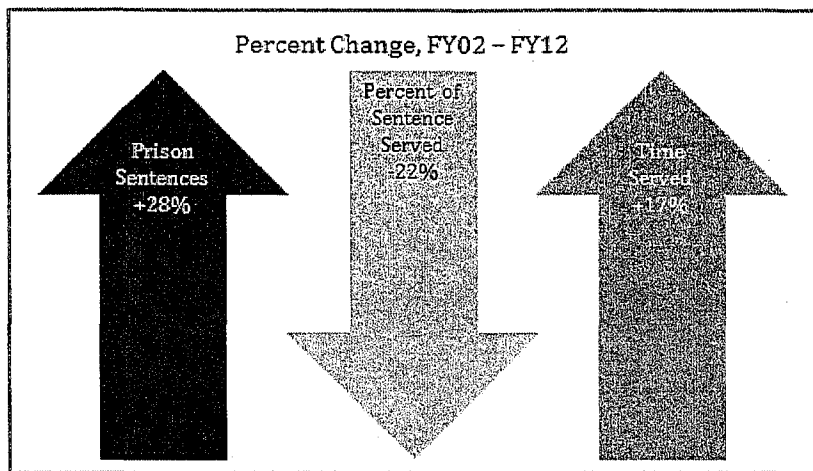
Moreover, the vast majority of offenders revoked to prison were not admitted for engaging in new criminal activity but rather for failing to comply with the terms of their supervision sentence. These revocations are called “technical revocations” and include conduct like missing drug tests or failing to report to probation officers. In FY2012, 75 percent of the offenders entering prison on a revocation of probation were revoked on a technical violation.

Lack of Clarity in Sentencing

The length of criminal sentences handed down by courts in Mississippi has grown 28 percent over the past decade. The Task Force heard repeatedly from criminal justice practitioners, including judges, district attorneys, and victims, that they are often unsure as to what percentage of a sentence an offender will serve in prison. Due to a variety of earned time and early release mechanisms, it is difficult to predict how much time an offender will spend in prison. The percent of a sentence served in prison can vary widely even within the same offense type based on how much time an offender earns and whether he is paroled or released on house arrest by MDOC. Of the nonviolent offenders released in FY2012, 24 percent had served less than 25 percent of their sentence. Of the violent offenders released that same year, 43 percent had served less than 50 percent of their sentence. The Task Force believes this uncertainty has led courts to issue longer sentences, even if they are not actually trying to ensure that offenders serve more time behind bars.

Even though earned time policies have reduced the percentage of a sentence served (down 22 percent), this decrease has not offset the increase in sentence lengths: offenders are now serving a smaller percentage of much longer sentences, resulting in more time served in prison. For newly

sentenced prisoners, average time served in prison went up by almost 17 percent over the last decade.



Research on Community Corrections and Mississippi's Data

The Task Force conducted a review of research on evidence-based policies and practices in community supervision and then assessed Mississippi's practices against these standards. The Task Force identified four key principles in assessing the state's community corrections system: (1) incorporating surveillance and treatment, (2) responding to violations of supervision with swift, certain, and proportional sanctions, (3) encouraging compliance through positive incentives, and (4) focusing resources on the first weeks and months following release from prison to ensure successful reentry.

An increase in the use of post-prison supervision, along with general growth in the size of the prison population, has led to a rapid expansion in the community corrections population. It has increased by nearly 10,000 offenders in the past five years, topping 38,600 offenders in July 2012. However, the size of the community corrections population is not reflected in the proportion of dollars in the corrections budget spent on supervision. Just seven percent of the total corrections budget (\$23 million) supports community supervision for the nearly 40,000 felony offenders on probation, parole, and house arrest.

Incorporating Surveillance with Treatment

Research makes clear that effective community supervision integrates treatment with surveillance.²⁰ Evidence-based drug and alcohol treatment programs can successfully lower recidivism among participants involved in the criminal justice system,²¹ and drug treatment in the community has been shown to reduce crime more than drug treatment in prison.²² However, MDOC currently restricts its community corrections funding to surveillance (reporting, fee collection, drug testing, etc.) and allocates no funding for drug, alcohol or mental health treatment for offenders on community supervision. Low-income offenders in rural areas have especially scarce treatment options.

Swift and Certain Responses to Violations

Another research-proven practice identified by the Task Force is responding to violations of supervision with swift, certain, and proportional sanctions. Swift and certain sanctions have been shown to reduce violations and recidivism, resulting in fewer revocations to prison.²³ An effective sanctioning process includes a graduated range of sanctions from low-intensity, such as community service hours, to more severe sanctions like short jail stays. However, structured graduated sanctioning, which has been adopted with success by probation and parole departments in states across the country, does not exist in Mississippi. The only tool available to supervision officers in responding to technical violations of supervision, such as missing drug tests or failure to report, is a full revocation to prison. Because these revocations have severe consequences (leading to an average time behind bars of 20 months), they are imposed inconsistently and with significant delays. The absence of swift and certain deterrents leads to high violation rates, extensive use of prison beds, and high taxpayer costs.

A lack of community-based services and sanctions not only constrains community corrections officers, it can also result in judges sending lower-risk offenders to prison simply to access treatment or because no other meaningful options exist.

Frontloading Supervision Resources

Research also indicates that offenders are most likely to commit crimes in the first few days, weeks, and months after release from prison. To address this high risk period, research demonstrates that supervision resources are more effective when they are targeted to this critical period. However, Mississippi currently has few resources for those reentering the community. More than 9,000 offenders leave state prisons each year, but Mississippi has no system-wide reentry programming and a total of just 100 beds in three transitional reentry centers across the state.

Policy Recommendations

After analyzing key drivers of the prison population, reviewing examples of successful criminal justice innovations in other states, and studying the growing body of research about what works in corrections, the Task Force proposes a comprehensive set of changes to sentencing and corrections policy and practice in Mississippi. These 19 recommendations will:

- Ensure certainty and clarity in sentencing,
- Expand judicial discretion in imposing alternatives to incarceration,
- Focus prison beds on violent and career offenders,
- Strengthen supervision and interventions to reduce recidivism, and
- Establish performance objectives and measure outcomes.

Ensure certainty and clarity in sentencing

1. Institute “true minimums”

Due to a variety of earned time and early release mechanisms, it is difficult to predict how much time an offender will spend in prison. The percent of a sentence served in prison can vary widely

even within the same offense type based on how much time an offender earns and whether he is paroled or released on house arrest by MDOC.

Recommendation: Institute “true minimums” to guarantee that nonviolent offenders serve at least 25 percent and violent offenders serve at least 50 percent of their court-ordered sentences. In the case of violent offenders, it would only affect those offenders currently earning trusty time and, therefore, able to leave before serving 50 percent of their sentences. Offenders who are eligible for earned time or parole would remain eligible and would earn time at the same rate but would not be able to be released before meeting the minimum thresholds.

This policy would only increase the percent of the sentence served; it would not decrease the percent of the sentence served for any offender. Offenders who are currently statutorily required to serve 100 percent or 85 percent of their sentence would continue to serve at least those minimums.

2. Eliminate the Intensive Supervision Program as an early-release mechanism

Mississippi allows the conditional release of certain nonviolent offenders to the Intensive Supervision Program (house arrest) within 15 months of their earliest release date if they are approved by MDOC’s Joint Placement Board.

Recommendation: To support “true minimums” and promote greater clarity in sentencing, remove MDOC’s ability to release offenders to house arrest. The policy would not affect a judge’s ability to incorporate the use of house arrest as a sentencing option.

3. Clarify what constitutes a violent offense

Mississippi inconsistently uses the term “violent” in establishing criteria for various policies, including eligibility for parole, habitual offender enhancements, and pre-trial diversion programs. This has led to confusion about the amount of time an offender is required to serve and which offenses are and are not crimes of violence.

Recommendation: Create one clear definition or list of violent offenses and apply it consistently across all policies that use “crime of violence” to determine eligibility.

4. Develop case plans for all parole-eligible offenders at admission and restrict parole hearings to non-compliant offenders

Mississippi’s parole grant rate has fluctuated widely over a relatively short period, from as high as 57 percent in November 2011 to as low as 30 percent in October 2012. Additionally, Parole Board members report that many offenders are initially denied release in order to complete treatment and programming deemed necessary for successful reentry. These nonviolent offenders must then return to the Board for second and subsequent hearings creating inefficiencies and delays.

Recommendation: Ensure a more consistent parole grant rate by developing case plans for all parole-eligible inmates at admission and restricting parole hearings to non-compliant offenders. This includes:

- a. Developing individual case plans for all parole-eligible inmates at admission. Case plans will include programming and services identified by a validated assessment tool, and sentencing

requirements (if applicable). The case plan should be achievable before the inmate's parole eligibility date; and

- b. Restricting parole hearings to only those offenders who have (1) failed to comply with the case plan or with general MDOC behavioral requirements, or (2) if the victim has requested a parole hearing. Otherwise, inmates will be paroled at their parole eligibility dates.

5. Enhance and standardize victim notification

In Mississippi, how and when a victim is notified of an offender's release from custody differs widely depending upon the offender's release type. Some release policies require notification within 30 days, others within 15 days and some simply require 48 hours. Additionally, while it is the policy of the Parole Board to provide 30-day advance notice of a parole hearing to victims, this timeline has not been established statutorily.

Moreover, only those victims who have registered with the MDOC are notified of Earned Release Supervision, Intensive Supervision Program, and expiration of sentence releases.

Recommendation: Create a uniform victim notification policy that reaches the most victims possible. This includes:

- a. Establishing a uniform 15-day victim notification requirement for offender releases, regardless of release type;
- b. Codifying the Parole Board's existing policy of providing 30-day victim prior notification of parole releases; and
- c. Mandating that notifications are provided to victims registered for notification with MDOC as well as to victim assistants in the District Attorney's Office where the case originated.

Expand judicial discretion in imposing alternatives to incarceration

6. Expand eligibility for alternatives to incarceration

Mississippi has a number of alternatives to incarceration for nonviolent offenders: non-adjudicated probation, probation, and house arrest. Non-adjudicated probation is a period of probation that, if successfully completed, results in expungement and no felony record. Probation is a sentence of community supervision and house arrest allows offenders to remain in their community under electronic monitoring. Current statutory restrictions limit judges' discretion to impose non-prison sentences that often may be more effective at reducing recidivism.

Recommendation: Expand judicial discretion to impose non-prison alternatives by:

- a. Lifting the exclusion to non-adjudicated probation for all drug offenses with the exception of trafficking convictions;
- b. Lifting the exclusion to probation for offenders who have a previous felony conviction; and
- c. Lifting the exclusion to the Intensive Supervision Program for offenders who have a previous felony conviction and authorizing judges to impose the Intensive Supervision Program to low risk, nonviolent offenders when appropriate.

7. Expand eligibility for drug courts

Well-implemented drug courts can significantly reduce recidivism and the incidence of substance abuse. Over the last decade, Mississippi has developed an expansive drug court system and now has a drug court in every circuit. However, current law restricts many nonviolent offenders whose criminal activity is driven by substance abuse/addiction and who would benefit from a highly-regimented drug court program.

Recommendation: Broaden statutory criteria for drug court eligibility by eliminating the automatic disqualification for offenders convicted of a commercial drug offense or a driving under the influence offense, coupled with careful screening of all drug court eligible offenders prior to entering the drug court program.

Focus prison space on violent and career criminals

8. Create targeted punishments for property offenses

Mississippi's property offense statutes do not distinguish between vastly different levels of criminal conduct. For example, the theft of \$2,000 can trigger the same criminal sentence as the theft of \$50,000. This sentencing system can lead to wide disparities in penalties for similar conduct. For instance, in a review of sentencing documents related to Grand Larceny convictions, two offenders who had stolen \$556 and \$560 respectively received 36-month and 96-month sentences. Neither offender had been previously incarcerated. Additionally, the current threshold for felony property crimes is \$500, a figure that has not been adjusted for 10 years. Many of Mississippi's southern neighbors have recently raised their felony theft thresholds. South Carolina raised its theft threshold to \$2,000 in 2010; Georgia raised its threshold to \$1,500 in 2012.²⁴

Recommendation: Differentiate levels of property crimes by:

- a. Increasing the property value threshold to \$1,000 for felony theft and related offenses (this threshold has not been increased in 10 years);
- b. Establishing tiered property value thresholds beginning at \$1,000 with increasing sentence ranges, including enhanced penalties for higher level thefts; and
- c. Establishing a criminal enterprise law with enhanced penalties to deter organized retail theft.

See details below:

Property value	Misdemeanor property and forgery	Felony property and forgery
\$1,000 or less	Presumptive probation or less than 12 months	
\$1,000 or less, 3 rd and subs		No more than 3 years
\$1,000 to \$5,000		No more than 5 years
\$5,000 to \$25,000		No more than 10 years
\$25,000 or more		No more than 20 years

9. Create targeted punishments for drug offenses, with the most severe punishments focused on drug dealers (traffickers)

Mississippi's commercial drug offense statutes do not differentiate between offender conduct that is driven by addiction and conduct that is driven by greed and financial gain. An offender convicted of selling one gram of cocaine faces the same sentencing range as a person convicted of selling 40 grams. This disparity creates a wide range of sentences for similar conduct and provides little legislative guidance for addressing the diverse criminal conduct encompassed by these offenses.

Even within possession sentences, which are currently structured by weight, the wide sentence ranges lead to disparate punishment for the same offenses.

Recommendation: The Task Force examined several policy options and recommends restructuring drug sentences that:

- a. Reduce the use of imprisonment for low-level drug possession offenders;
- b. Establish a weight-based tiered system for commercial drug offenses similar to the weight-based system for possession offenses, thereby aligning sentence ranges with the seriousness of the offense; and
- c. Create a "trafficking" offense that would apply to drug dealers based on possessing a large amount of a controlled substance and establishing a very stiff penalty.

Depending on the approach taken, the legislature could achieve significant cost savings based on averted prison growth.

10. Implement a "geriatric parole hearing trigger"

Geriatric prisoners are often more expensive than younger inmates because of their higher medical costs. At the same time, they are often at a lower risk of recidivism than younger inmates because they have "aged out" of their crime committing years. However, Mississippi currently houses 799 offenders who are 60 years old or older.

Recommendation: Replace the existing conditional geriatric release statute with a "parole hearing trigger" which would require parole hearings for nonviolent offenders who are 60 years old or older and have served at least 10 years of their sentences behind bars. When evaluating geriatric offenders for parole under this policy, the Parole Board would consider likelihood of re-offense alongside criminal history, behavior in prison, participation in treatment, and plans pending release. This provision would exclude offenders sentenced under the habitual offender statute. The Parole Board would make all decisions regarding release.

11. Establish consistency in "trusty time"

Trusty earned time is available to certain offenders who meet classification criteria and participate in work or educational programming. Trusty earned time is available to drug sale offenders but not available to offenders convicted of drug possession with intent, a less serious offense.

Recommendation: Expand eligibility for trusty time to possession with intent offenses. Current exclusions for drug trafficking offenders and offenders sentenced under the habitual offender statute will remain in place.

12. Ensure nonviolent offenders are parole eligible

Parole eligibility is restricted to nonviolent offenders, but current parole statutes exclude certain classes of nonviolent offenders, including offenders sentenced for enhanced felonies such as possession of a controlled substance within 1,500 feet of a church. Additionally, recent court rulings have identified a lack of clarity in the parole statute, rendering some commercial drug offenders ineligible for technical reasons.

Recommendation: Ensure that parole eligibility is available to nonviolent offenders by:

- a. Lifting restrictions on parole eligibility for nonviolent offenders sentenced under an enhancement; and
- b. Clarifying that lower-level commercial drug offenses are nonviolent for the purposes of parole consideration and thereby permitting MDOC to continue issuing parole hearing dates to these offenders, while retaining ineligibility for traffickers and habitual offenders.

Strengthen supervision and intervention

13. Implement graduated sanctions and incentives

Mississippi law does not authorize community supervision field officers to respond to technical violations of community supervision, such as missing drug tests or treatment sessions, with intermediate sanctions. Instead officers must either let the minor misconduct go unsanctioned or pursue a full revocation to prison. In many cases, this results in a response that is either inadequate or disproportionately severe.

Recommendation: Develop a structured system of intermediate sanctions and incentives to swiftly and proportionately respond to both positive behavior and technical violations of supervision conditions. When determining the sanction to be imposed, the field officer will take into account the offender's assessed risk level, previous violations and sanctions, and severity of the current and prior violations. Elements of the system would include:

- a. A graduated system of sanctions that includes verbal warnings, increased reporting, increased drug and alcohol testing, mandatory substance abuse treatment, loss of earned credits, and short jail stays of up to two days for certain violations (not to exceed four days in any month).
- b. A graduated system of incentives for compliance that includes verbal recognition, reduced reporting, and credits for early discharge.
- c. A requirement that the supervision officer notify the sentencing court or Parole Board when a sanction is imposed.

14. Create specialized detention centers, programming, and cap incarceration periods for technical violations of supervision

Offenders revoked for technical violations of community supervision are returned to prison for up to the remainder of their sentence. Entering from the community, these probationers and parolees join the general prison population where they mix with violent and career offenders.

Recommendation: To (1) ensure that lower-level probationers and parolees are not mixed in with the general prison population, (2) target factors driving offender misconduct, such as addiction, and (3) provide an effective and proportional response to noncriminal violations:

- a. Re-designate existing MDOC facilities as specialized technical violation centers (TVCs) with a corresponding sanctioning structure for technical revocations of supervision. Judges (for probation) and the Parole Board (for parole) will retain supervision authority and will be able to impose periods of imprisonment for parole or probation violations under the following graduated structure:
 - i. Up to 90 days in a TVC for the first revocation
 - ii. Up to 120 days in a TVC for the second revocation
 - iii. A judge or the Parole Board may opt to impose either up to 180 days in a TVC or up to the full remaining term in prison for the third revocation
 - iv. A judge or the Parole Board may impose up to the full remaining term in prison for the fourth and subsequent revocations
- b. The revocation term imposed in a TVC may not be reduced and the violator will serve the full term imposed.
- c. TVCs will be specially equipped to address those underlying factors leading to offender violations, including substance abuse, and other needs identified by a validated risk and needs assessment as a necessary component of the person's recidivism reduction plan.

15. Streamline jail transfers

Mississippi does not set limitations on the length of time probationers and parolees can be held in county jails awaiting revocation hearings. A review of parole revocation reports revealed an average wait time in jail of 45 days and anecdotal reports suggest even longer wait times for probationers. These delays limit the ability of public safety professionals to hold offenders accountable swiftly and certainly, and they place a heavy burden on local jail space and county funds.

Recommendation: Statutorily limit to 21 days the time parolees and probationers can be held in county jails awaiting revocation proceedings for technical violations. If the hearing is not held in that timeframe, the offender will be released. This policy would not impose timelines for revocations with an associated new criminal charge. Additionally, to further streamline jail transfers, statutorily authorize the use of electronic hearings for both preliminary and formal revocation hearings.

Ensure quality and sustainability of reforms

16. Institute drug court standards and reporting requirements

By effectively addressing the risks and needs of participating offenders, drug courts can reduce recidivism and rehabilitate offenders. However, Mississippi's drug courts operate largely independently from county to county with few standardized practices, including offender eligibility criteria, length of program, supervision or treatment standards, and data collection requirements.

Recommendation: Institute statewide standards for all drug courts based on the 10 key components established by the National Association of Drug Court Professionals, including:

- a. Requiring all drug courts to have treatment services appropriate for drug court participants;
- b. Requiring all drug courts to annually collect and report participant data;
- c. Requiring the Administrative Office of the Courts (AOC) to establish a drug court certification process for continued state funding;
- d. Requiring AOC collect and report participant data to the Governor and the Judiciary, Corrections, and Ways and Means Committees;
- e. Requiring drug court participants to be moderate to high risk and in need of treatment;
- f. Requiring the use of validated assessments including clinical assessments to determine whether an offender meets the moderate to high recidivism risk requirement and the moderate to high treatment needs requirement;
- g. Requiring all drug courts to have clinical professionals to assist in making treatment decisions and delivering treatments; and
- h. Assigning a group to be responsible for monitoring and evaluation of evidence-based practices and require data collection and reporting on performance and outcome measures.

17. Provide enhanced training for decision makers and community supervision officers

Recommendation: To ensure that stakeholders across the criminal justice and corrections systems have the latest information about recidivism reduction and the best types of interventions and treatment for offenders, statutorily require annual trainings on evidence-based practices. This will include:

- a. Establishing an annual training schedule and providing training on evidence-based practices for parole board members based on guidelines set by nationally recognized organizations; and
- b. Requiring annual trainings for probation and parole officers and supervisors, including instruction on criminal risk factors, how to target them, and how to support and encourage compliance and behavior change.

18. Require collection of key performance measures and establish an oversight council

Reforms to Mississippi's corrections and criminal justice systems will require careful implementation and oversight, necessitating enhanced data collection. Several states that have implemented similar comprehensive reforms, including South Carolina and Georgia, have mandated data collection on key performance measures and established oversight councils to track implementation and report on outcomes.

Recommendation: Require enhanced data collection and establish an Oversight Task Force composed of legislative, executive, and judicial branch designees as well as criminal justice practitioners. Elements of this recommendation include:

- a. Requiring MDOC, the Parole Board, and AOC to collect and report data to the Oversight Task Force on key performance measures including, but not limited to: recidivism rates, percentage of time served, average length of stay, drug court outcomes, and prison population;

- b. Requiring the Oversight Task Force to meet at least twice per year to monitor the reforms and report back to the Legislature on their implementation; and
- c. Charging the Oversight Task Force with making additional recommendations to the Legislature on future legislation and policy options.

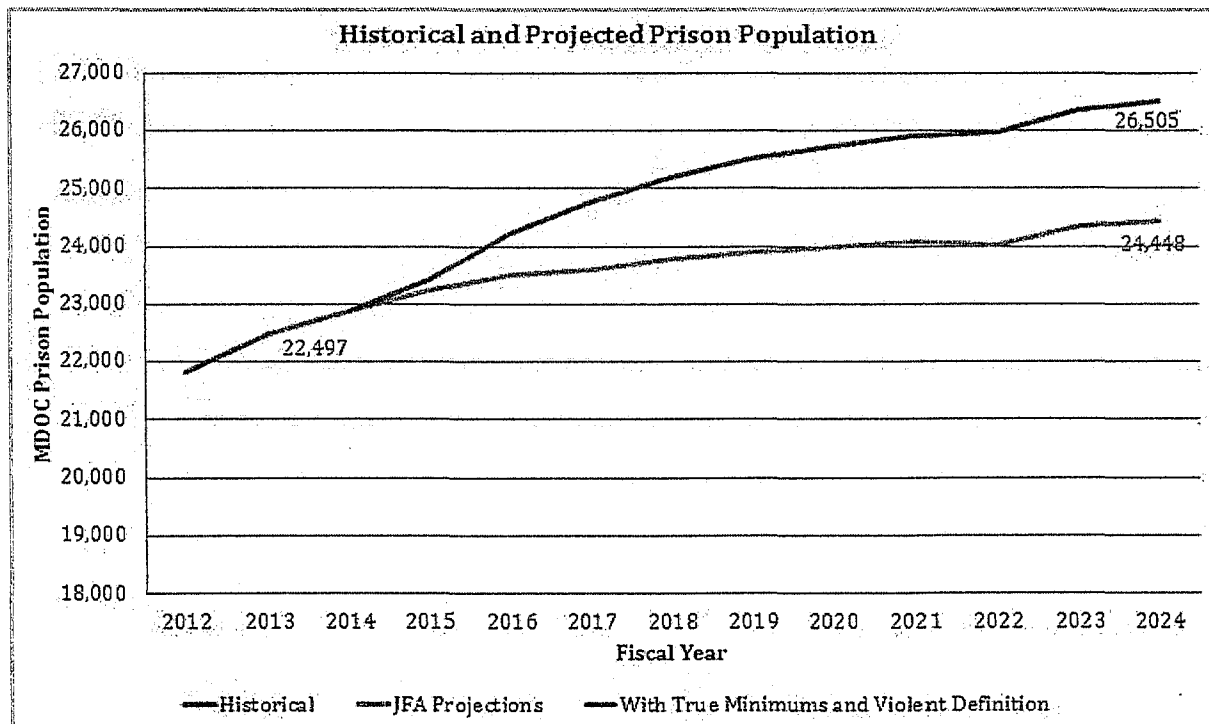
19. Ensure policy makers are aware of the impact of all legislative proposals that could affect prison populations

Many sentencing and corrections reforms do not affect biennial budgets, but have significant impacts on budgets four, six, and eight years out or longer. Fiscal impact statements that cover a longer period of time would give policy makers a more accurate account of the budget implications of proposed sentencing and corrections policies.

Recommendation: Require 10-year fiscal impact statements to accompany future sentencing and corrections legislation.

Policy Impacts

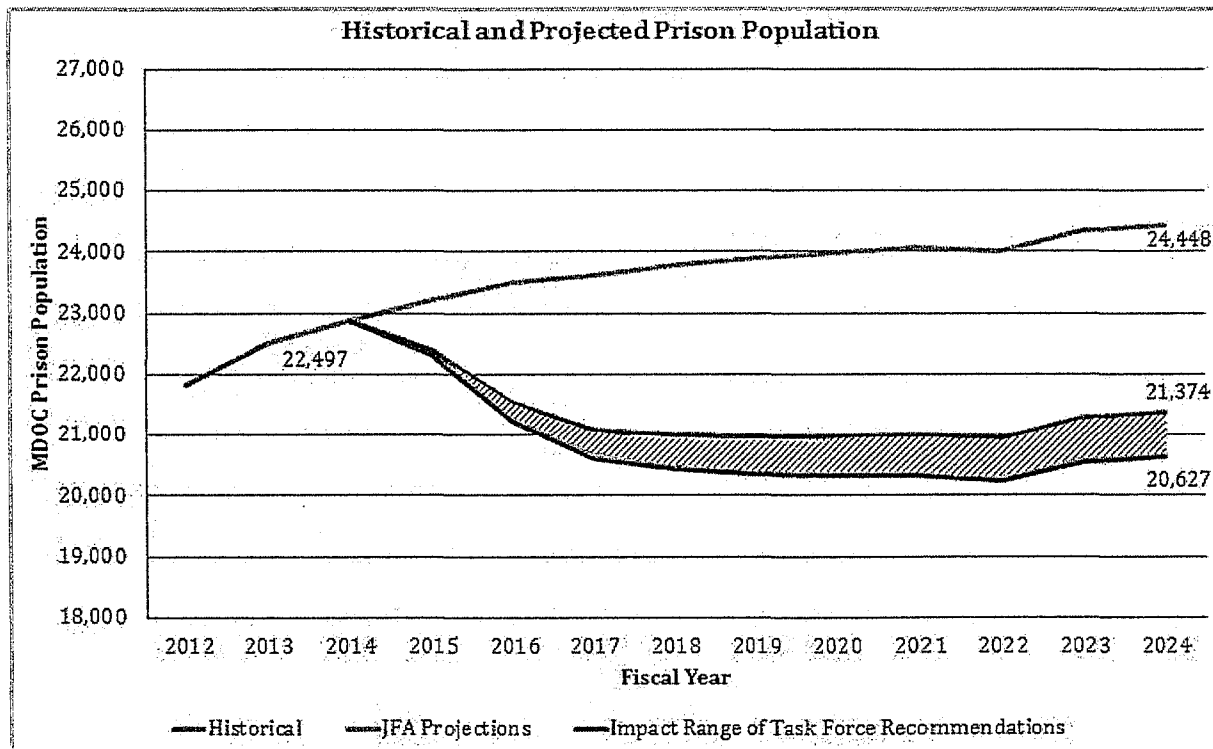
The subset of policy proposals specifically designed to create more clarity and certainty in the sentencing system – including instituting “true minimums,” removing MDOC’s authority to release offenders early to house arrest, and creating a uniform definition of violence – would increase the size of Mississippi’s prison population significantly, adding further to the projected 10-year prison growth.



However, balancing the policy proposals designed to ensure clarity in sentencing with the remainder of the package, including those policies designed to focus prison beds on serious violent

offenders, results in a significant impact on projected prison growth. In fact, the full package of Task Force reforms will not just protect public safety, and ensure clarity in sentencing; it is also projected to avert all of the anticipated 10-year prison growth and safely reduce Mississippi's prison population below current levels.

Depending on the specific sentencing ranges adopted for a drug sentencing policy, the full Task Force package would save the state from funding 3,074 – 3,821 prison beds over the next 10 years, averting all of the projected inmate growth, including the additional inmate growth from instituting true minimums. At minimum, the Task Force policies would avert \$266 million in otherwise required spending.



Reinvestment Priorities

The Task Force strongly recommends that savings from averted prison costs be reinvested into fully funding drug courts, strengthening community supervision, improving reentry services, and reducing burdens on local jurisdictions.

1. Invest in adult and juvenile drug courts

Mississippi's adult and juvenile drug courts are currently funded through a \$10 assessment on traffic fees. This funding scheme has not been adjusted since it was implemented in 2004, though the number of drug courts has increased over three-fold since that date. Growth in the number of

courts has outstripped resources and funding for Mississippi's drug courts was cut by 42 percent for FY2014.²⁵

Recommendation: Fully fund Mississippi's juvenile and adult drug courts, including money to increase treatment options available to participants as well as develop other services including workforce training, life-skills training and GED classes. Additional monies would also be used to increase AOC infrastructure to ensure that drug courts are adhering to state standards and following best practices.

2. Invest in enhanced supervision practices, including funding for treatment and electronic monitoring

MDOC currently allocates no funding for drug, alcohol, mental health, anger management, or sex offender treatment for offenders on community supervision. Additionally, MDOC only has enough electronic monitoring capacity for offenders on house arrest and not enough to use with probationers and parolees.

Recommendation: In order to improve public safety outcomes for offenders on supervision, direct savings to expand Mississippi's capacity for community sanctions and services, including drug, alcohol, mental health, anger management, and sex offender treatment, and electronic monitoring. Additionally, in order to direct resources to the highest risk offenders, require MDOC to use a risk and needs assessment tool to guide decisions about surveillance levels and treatment plans.

3. Improve reentry services by increasing the capacity of residential reentry centers and implementing mandatory reentry planning

More than 9,000 offenders leave Mississippi prisons each year, but the state has no system-wide reentry programming and just three transitional reentry centers, which together have fewer than 100 beds. Additionally, only certain offenders participate in the pre-release program and receive comprehensive reentry planning and preparation.

Recommendation: Improve reentry services for offenders entering the community by:

- a. Increasing the capacity of residential reentry services (also known as half-way houses); and
- b. Implementing mandatory reentry planning for all offenders returning to the community. Reentry planning will begin at least three months prior to an offender's presumptive release date and will include both (1) a pre-release assessment, identifying whether an inmate is able to attend to basic needs upon release, and (2) a written discharge plan.

4. Reduce burdens on local jurisdictions

By statute, local jurisdictions are reimbursed for holding offenders in county jails who are awaiting revocation hearings if and only if the MDOC has available funds. No funds were available in the preceding two fiscal years, creating a substantial burden on local jurisdictions.

Recommendation: Subject to the adoption of the other recommendations contained herein, the Task Force recommends striking the clause that makes reimbursements contingent upon available funds and reinvesting funds from averted prison costs towards reimbursing local jurisdictions for holding probationers and parolees awaiting revocation hearings.

Items Recommended for Further Review

Some Task Force members expressed interest in pursuing policies around early childhood education and Attorney General Jim Hood highlighted its benefits at Governor Bryant's Public Safety Summit. Studies show that children who attend high-quality, voluntary pre-kindergarten demonstrate gains that persist throughout their school years, including improved literacy and reduced need for special and remedial education. These benefits attained during childhood and adolescence can in turn lead to decreased criminal behavior, as well as greater education attainment, higher lifetime earnings, and less dependence upon welfare.²⁶ Several members of the Task Force suggested that a long-term approach to crime reduction through investments in early childhood education should be explored further.

Additionally, some Task Force members acknowledged the need for comprehensive studies on several issues that came up during the Task Force work, including an ongoing review of re-entry services and best practices; a review of mental health populations in Mississippi's jails and prisons; and finally a review of juvenile offenders in the adult system. While, these issues were ultimately deemed too complex to be adequately addressed within the Task Force's limited timeframe and scope of authority, the Task Force suggested they were worthy of further review.

- ¹Unless otherwise cited, the analyses in this report were conducted for the Corrections and Criminal Justice Task Force by the public safety performance project of the Pew Charitable Trusts using prison population data 2003 – 2013 provided by the Mississippi Department of Corrections; prison population data 1992 – 2012 from Department of Justice, Bureau of Justice Statistics, Prisoner Series, <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=269>.
- ² Department of Justice, Bureau of Justice Statistics, National Prisoner Series, 2012.
- ³ Wendy Naro Ware and Roger Ocker, Ten-Year Adult Secure Population Projection, 2014-24, Mississippi Department of Corrections, 2013.
- ⁴ House Bill 1231, 2012, <http://billstatus.ls.state.ms.us/documents/2013/html/HB/1200-1299/HB1231PS.htm>.
- ⁵ National population data from the U.S. Census Bureau, <http://www.census.gov/>.
- ⁶ The offense categories used for this report are based on the National Crime Information Center offense codes from the FBI. However, two crimes considered nonviolent under NCIC classifications were added to the violent category for the purposes of this report – specifically child abuse and DUI resulting in injury or death.
- ⁷ Pew Center on the States, *One in 100 Behind Bars in America*, 2008, <http://www.pewstates.org/research/reports/one-in-100-85899374411>.
- ⁸ National Association of State Budget Officers, *State Expenditure Report FY 2006*, 2007, <http://www.nasbo.org/Publications/PDFs/fy2006er.pdf>.
- ⁹ Department of Justice, Bureau of Justice Statistics, National Prisoner Series.
- ¹⁰ Department of Justice, Bureau of Justice Statistics, National Prisoner Series; Federal Bureau of Investigation, Uniform Crime Reports, 2006 and 2011, <http://www.ucrdatatool.gov/>.
- ¹¹ Department of Justice, Bureau of Justice Statistics, National Prisoner Series; Federal Bureau of Investigation, Uniform Crime Reports, 2006 and 2011.
- ¹² Council of State Governments Justice Center, *Assessing the Impact of the 2007 Justice Reinvestment Initiative*, 2009 <http://www.ncsl.org/portals/1/Documents/cj/texas.pdf>.
- ¹³ Council of State Governments Justice Center, *Lessons from the States: Reducing Recidivism and Curbing Corrections Costs Through Justice Reinvestment*, 2013, <http://csgjusticecenter.org/jr/kansas/media-clips/lessons-from-the-states-reducing-recidivism-and-curbing-corrections-costs-through-justice-reinvestment/#.UqcwDPTkuhM>.
- ¹⁴ State of Texas Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates*, 2013, http://www.lbb.state.tx.us/Public_Safety_Criminal_Justice/RecRev_Rates/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2012.pdf.
- ¹⁵ Federal Bureau of Investigation, Uniform Crime Reports.
- ¹⁶ Daniel S. Nagin, Francis T. Cullen, and Cheryl Leo Jonson, "Imprisonment and reoffending," in *Crime and Justice: A Review of Research* Vol. 38, ed. Michael Tonry (Chicago: University of Chicago Press, 2009); Paul Gendreau et al., "The Effects of Community Sanctions and Incarceration on Recidivism," in *Forum on Corrections Research* 12, 2012; Paula Smith, Claire Goggin and Paul Gendreau, "The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences," 2002, http://ccoso.org/library%20articles/200201_Gendreau_e.pdf; Patrice Villettaz, Martin Killias, and Isabel Zoder, "The Effects of Custodial vs. Noncustodial Sentences on Re-Offending: A Systematic Review of the State of Knowledge," (Philadelphia: The Campbell Collaboration Crime and Justice Group, 2006).
- ¹⁷ Nagin, "Imprisonment and Reoffending."
- ¹⁸ G. Matthew Snodgrass et al., "Does the Time Cause the Crime? An Examination of the Relationship Between Time Served and Reoffending in the Netherlands," *Criminology* 49, 2011; Thomas A. Mulvey et al., "Estimating a Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders," *Criminology* 47, 2009; National Council on Crime and Delinquency, "Accelerated Release: A Literature Review," 2008, http://www.nccdgloba.org/sites/default/files/publication_pdf/focus-literature-review.pdf; Bureau of Justice Statistics, "Recidivism of Prisoners Released in 1983," 1989, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1135>; Bureau of Justice Statistics, "Recidivism of Prisoners Released in 1994, 2002," <http://bjs.gov/content/pub/pdf/rpr94.pdf>; Paul Gendreau and Claire Goggin, "The Effects of Prison Sentences on Recidivism," 1999; Thomas Orsagh and Jong-Rong Chen, "The Effect of Time Served on Recidivism: An Interdisciplinary Theory," *Journal of Quantitative Criminology* 2, 1989; Washington State Institute for Public Policy, "Sentences for Adult Felons in Washington: Options to Address Prison Overcrowding," 2004, http://www.wsipp.wa.gov/ReportFile/879/Wsipp_Sentences-for-Adult-Felons-in-Washington-Options-to-Address-Prison-Overcrowding-Part-II-Recidivism-Analyses_Full-Report.pdf; Ilyana Kuziemko, "Going Off Parole: How the Elimination of Discretionary Prison Release Affects the Social Cost of Crime, National Bureau of Economic Research Working Paper, 2007, <http://www.nber.org/papers/w13380>.
- ¹⁹ Includes offenders revoked from probation, parole, house arrest, and earned release supervision.
- ²⁰ Washington Institute for Public Policy, "Inventory of evidence-based and research-based programs for adult corrections," 2013, http://www.wsipp.wa.gov/ReportFile/1542/Wsipp_Inventory-of-Evidence-Based-and-Research-Based-Programs-for-Adult-Corrections_Full-Report.pdf.

²¹ National Institute on Drug Abuse, "Principle of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide," 2006, <http://www.drugabuse.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations>.

²² Washington State Institute for Public Policy, "Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State," 2009, <http://www.wsipp.wa.gov/rptfiles/09-00-1201.pdf>.

²³ Drake, "Inventory of evidence-based and research-based programs for adult corrections."

²⁴ National Council for State Legislators, *Trends in Sentencing and Corrections*, 2013, <http://www.ncsl.org/Documents/CJ/TrendsInSentencingAndCorrections.pdf>

²⁵ Associated Press, "Mississippi Will Cut Funding to Drug Courts," 2013 <http://www.cdispatch.com/news/article.asp?aid=24837&TRID=1&TID>.

²⁶ Pew Center on the States, *Formula for Success: Adding High Quality Pre-K to State School Funding Formulas*, 2010, [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Pre-k education/Formula for Success.pdf?n=1406](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Pre-k%20education/Formula%20for%20Success.pdf?n=1406)